

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
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OFFICE OF THE CLERK

JAMES TRACY SMALL,

Plaintiff,

vs.

UNION PACIFIC RAILROAD
COMPANY,

Defendant.

C.A. No. 8:05cv402

COMPLAINT

Plaintiff, James Tracy Small, by his attorneys, Yaeger, Jungbauer, & Barczak, PLC, for his causes of action against Defendant, Union Pacific Railroad Company, states that:

COUNT I

1. At all material times, Plaintiff, was and is a resident of the State of Kansas, the City of Marysville.
2. The Defendant, Union Pacific, was and is a Delaware corporation, and was and is an interstate carrier, operating an interstate system of railroads in and through several states, including the State of Nebraska, City of Omaha;
3. The jurisdiction of this court is based in part upon Title 45, United States Code, §§51-60, commonly known as the Federal Employers' Liability Act (FELA).
4. On or about September 9, 2003, Plaintiff was engaged in the scope and course of his employment as a Roadway Equipment Operator (REO) for the defendant railroad at the Yoder Subdivision near milepost 214.14, north of Albin, Wyoming. On that day, Plaintiff was required to operate a piece of heavy equipment called a Pettibone Multikrane to set concrete box

culvert sections. As Plaintiff was lowering a culvert to the ground with the crane when, without warning, the cab and boom broke off of the crane and fell forward, with Plaintiff stuck hanging upside down by his seatbelt.

5. The accident caused Plaintiff to suffer serious and permanent injuries to his back, arms, legs, left groin and testicle, neck, shoulders, upper lip. and other parts of his body, as a result of Defendant's negligent violation of the Federal Employer's Liability Act, to wit:

- a. Defendant railroad negligently failed to provide Plaintiff with a reasonably safe place to work;
- b. Defendant railroad negligently failed to inspect and/or maintain the crane and bolts in question;
- c. Defendant railroad negligently failed to repair the defective conditions or have in place proper safety mechanisms;
- d. Other negligence.

6. As a result, in whole or in part of Defendant's negligent violation of the FELA, as set forth above, Plaintiff has in the past and will in the future suffer physical and emotional pain, and require medical treatment for said injuries, requiring past and future medical care in amounts Plaintiff will prove at trial.

7. As a further result, in whole or in part of Defendant's negligent violation of the FELA, as set forth above, Plaintiff has in the past and will in the future suffer a loss of wages and loss or diminution of earning capacity, including fringe benefits, in amounts Plaintiff will prove at trial.

WHEREFORE, Plaintiff JAMES TRACY SMALL asks this Court to enter judgment in his favor and against the Defendant UNION PACIFIC RAILROAD COMPANY in an amount

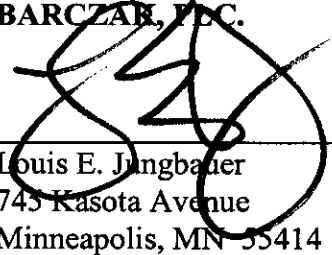
sufficient to fully compensate Plaintiff for damages and injuries to be proven at trial and for his costs and disbursements.

PLAINTIFF REQUESTS A JURY TRIAL.

Dated: _____

8/11/05

**YAEGER, JUNGBAUER &
BARCZAK, P.C.**



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